

MTCA Reporting Requirements and Enforcement Discretion

Area-Wide Soil Contamination Task Force Meeting

September 24, 2002

The following information is provided in response to questions posed by the Area-Wide Soil Contamination Task Force. Included is an overview of the Model Toxics Control Act reporting requirements, property listing, and Ecology's use of enforcement discretion.

What triggers the need to report a release to Ecology?

Various types of spills or releases must be reported including:

- Oil and Hazardous Substance Spills
- Leaks or Spills from Underground Storage Tanks
- Historic Releases of Hazardous Substances
- Spills at Hazardous Waste Facilities

Who must report and when?

Owners or operators who know of or discover a release of a hazardous substance that may threaten human health or the environment must report the release to Ecology within 90 days of discovery (statutory requirement). Releases from underground storage tanks must be reported within 24 hours (statutory requirement).

What must be reported?

Report must be made about when and where the environmental problem was discovered, the kind of materials(s) found or released, the cleanup status, site contact, etc. (statutory requirement). Reports may be anonymous.

Once a release is reported, what happens?

Initial Investigation (I.I.):

Statute requires that Ecology initiate an Initial Investigation within 90 days of receipt of a release report. An I.I. is the first stage of a site evaluation. Based on the results of the I.I., Ecology determines which sites require (a) no further action, (b) a Site Hazard Assessment (SHA), and/or (c) interim or emergency actions. This determination is made at the section manager level. If it is determined that a site needs further action (other than an interim/emergency action), then it proceeds to the SHA process.

Site Hazard Assessment:

- The purpose of an SHA is to confirm or rule out that a release or threatened release has occurred; to identify the hazardous substance, its extent, and concentrations; to begin characterizing the release; and to evaluate the potential for the threat to human health and the environment. There is no specified time within which Ecology must conduct an SHA. Based on the information gathered through the SHA, it is decided if ranking is warranted. If so, the site is ranked on a scale of 1 to 5 and listed on the hazardous sites list.

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- ii. MTCA, in its original provisions, directed Ecology to develop a hazard ranking system for hazardous waste sites. The system that was developed is called WARM and ranks sites on a scale of 1-5, with 1 representing the highest priority sites.

How does Ecology treat agricultural releases in its listing policy?

MTCA does not differentiate between a release caused by agricultural activities and releases caused by other types of activities (e.g., industrial or commercial). MTCA does provide an exemption from liability for persons “who for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations” (RCW 70.105.040(3)(d)). Ecology does not have a policy similar to EPA’s policy for not listing pesticide contamination sites unless the contamination was due to leaks, spills, or improper disposal. However, SHAs are prioritized based on potential risks. In practice, this has meant that Ecology tends to look at agricultural releases at the point of conversion, when agricultural lands are converted to other, more intense uses (i.e., those that have a higher risk of exposure).

How does Ecology use its enforcement discretion?

Although residential homeowners are potentially liable parties (PLPs), in the exercise of its enforcement discretion, Ecology will generally not pursue enforcement actions toward residential landowners to require such an owner to take response actions or pay response costs unless:

- a) The residential homeowner’s activities lead to a release or threatened release of hazardous substances which results in the need for remedial actions at the site;
- b) The property owner fails to comply with any MTCA obligations (e.g., reporting the release of a hazardous substance);
- c) The property owner fails to provide access to the site or information, or fails to cooperate with Ecology’s investigation or cleanup at the site;
- d) The property owner develops or improves the property in a manner inconsistent with residential use or the development of the property leads to a release or threatened release of hazardous substances.
- e) The property owner fails to comply with any institutional controls established at the site.

(Ecology Policy No. 540A, Residential Properties)

How does Ecology use its enforcement discretion at agricultural properties?

Ecology looks at agricultural properties on a case-by-case basis. Generally, if the property is not in commercial production, it is treated the same as a residential property. Agricultural properties that are under corporate, limited liability corporations, partnerships, sole proprietorship, or other business forms and are producing crops for sale tend to not be considered residential properties. Generally speaking, agricultural properties that do not contain a residence are not considered residential.